

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of**

**Copper Valley Wireless, Inc.**

**Telephone Number Portability**

**Petition for Waiver of Rule Section 52.31,  
or Extension of Time, to Comply with  
the Commission's Wireless Local  
Number Portability Requirements**

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)  
) **CC Docket No. 95-116**  
)

**To: Chief, Wireless Telecommunications Bureau**

**SECOND PETITION FOR LIMITED WAIVER OR EXTENSION OF TIME**

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**Filed: December 14, 2005**

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**Summary**

Copper Valley Wireless, Inc. ("Copper Valley") requests an additional one-year temporary waiver of the requirements of Section 52.31 of the Rules, or an additional one-year extension of time, up to and including February 25, 2007, within which to port numbers within its service area in the B4 Segment of the Alaska 2 – Bethel RSA. Copper Valley is the licensee of Cellular Radiotelephone Service Station KNKQ401. This petition is being filed more than 60 days in advance of the current February 25, 2006 compliance deadline.

The essential justification for the requested relief is hardship. Copper Valley's circumstances are exceptionally unique. Copper Valley is an extremely small, rural wireless carrier serving a very sparsely populated, but geographically extensive, rural area in the State of Alaska. It has a very small customer base and very modest revenues. Copper Valley's network employs entirely analog Plexsys base station and switching equipment installed in the early 1990s, equipment which cannot be retrofitted or modified to support Wireless Local Number Portability. Copper Valley is in the process of replacing the equipment with state-of-the-art Code Division Multiple Access ("CDMA") equipment.

Copper Valley has met the Commission's standards for securing the requested relief. In addition, Copper Valley is also entitled to relief under the standards set forth in Section 251(f)(2) of the Communications Act of 1934, as amended; which Copper Valley submits sets forth the governing principles for decision in this case.

Copper Valley Wireless, Inc. (“Copper Valley”), pursuant to Sections 1.3, 1.925(a) and 1.925(b)(2) of the Commission’s Rules, hereby requests an additional one-year temporary waiver of the requirements of Section 52.31 of the Rules, or an additional one-year extension of time, up to and including February 25, 2007, within which to port numbers within its service area in the B4 Segment of the Alaska 2 – Bethel Rural Service Area (“the Alaska 2(B4) RSA”). The Commission previously granted Copper Valley a one-year waiver and extension of time, up to and including February 25, 2006, within which to comply with the Wireless Local Number Portability (“Wireless LNP”) requirements. See Copper Valley Wireless, Inc., Order, CC Docket No. 95-116, Mimeo DA 05-538, released March 3, 2005 (“Order”) (See Attachment A hereto). The Order granted Copper Valley’s “Petition for Limited Waiver or Extension of Time,” filed December 23, 2004 (the “December 23, 2004 Petition”), which was prompted by an August 25, 2004 porting request from Dobson Cellular Systems, Inc. (“Dobson”).

specifying an effective date of February 25, 2005. In support hereof, the following is shown:

**This Petition is Timely Filed**

1. This Petition is being filed at least 60 days in advance of the February 25, 2006 effective date of Copper Valley's Wireless LNP obligations, as established by the Order. Accordingly, the Petition is timely-filed under Section 52.31(d) of the Rules.

**Statement of Facts**

2. Copper Valley is the licensee of Cellular Radiotelephone Service Station KKNKQ401, the Frequency Block B cellular system serving the Alaska 2(B4) RSA. Copper Valley is wholly-owned by Copper Valley Telephone Cooperative, Inc., a rural telephone cooperative that is owned by its subscribers. As such, Copper Valley is a Commercial Mobile Radio Service ("CMRS") licensee and, therefore, is subject to the requirements of Section 52.31 of the Rules.

3. As noted in the December 23, 2004 Petition, Copper Valley's cellular system is exclusively analog, and utilizes switching and base station equipment manufactured by Plexsys. The equipment has been discontinued by the manufacturer and is no longer being supported by the manufacturer. Accordingly, the system has no digital transmission capability, and cannot be modified or retrofitted (through, for example, the installation of software patches and upgrades) to be compliant with such features as the Commission's Wireless LNP requirements, the E-911 requirements, or the requirements of the Communications Assistance for Law Enforcement Act ("CALEA"). The equipment was installed in the early 1990s. As the statement of facts set forth below indicates, when all factors are considered in their totality, Copper Valley continues to

face truly unique circumstances in achieving compliance – circumstances which would not be experienced by carriers operating in the remaining 49 states.

4. The Plexsys equipment utilized by Copper Valley is a first-generation, analog-only AMPS cellular system – and it may well be one of the few such systems still in operation in the United States. The companies that initially designed, later acquired, and then provided technical service to the Plexsys cellular system equipment product line are no longer in business. Upon information and belief, Plexsys was acquired in 1995 or 1996 by COMSAT RSI of Herndon, Virginia, which subsequently discontinued all support services for the Plexsys product line. Two employees originally with Plexsys (and later with COMSAT RSI) subsequently started Blue Ridge Communications to provide technical support for the Plexsys product line, but ultimately declared bankruptcy and went out of business. Thus, no support services of any kind currently exist for the equipment.

5. As of the filing of the December 23, 2004 Petition, Copper Valley was still studying the feasibility of supplementing (and ultimately replacing entirely) the existing analog system with state-of-the-art base station and switching equipment. At that time, Copper Valley was studying the feasibility of deploying replacement equipment manufactured by Nortel Networks (“Nortel”) using the Code Division Multiple Access (“CDMA”) air interface. As of December 23, 2004, preliminary estimates placed the cost of the new Nortel CDMA base station and switching equipment at \$4,361,072.87, excluding spares, installation and engineering.

6. Since December 23, 2004, Copper Valley has completed its feasibility study, and has entered into a contract with Vantage Point Solutions to provide engineering and

design services for a replacement system, and to recommend appropriate equipment vendors for the replacement CDMA system equipment. Copper Valley is paying Vantage Point Solutions approximately \$100,000.00 for its services. Rough price quotes received to date place the cost of the replacement base station and switching equipment at approximately \$3.5 million – substantially less than the \$4.36 million price quote received for the Nortel equipment. This substantial cost savings is a major consideration to a small carrier such as Copper Valley, which has a very small subscriber base and limited financial resources.

7. Copper Valley intends to commence construction of the replacement CDMA system by no later than June 30, 2006; and anticipates that by the end the building season in late August of 2006 it will have in place the replacement switch and replacement base station equipment at its Valdez, Glennallen, Lake Louise, Willow Creek, Tolsona Ridge and Paxson cell sites, for a total of six sites. The installation of the CDMA equipment will require the construction of a new system through, for example, the installation of additional transmitters and antennas at the cell sites and, if needed, the construction of new towers. During the period from the commencement of construction through the end of the building season, all outdoor installation work will be performed. This will include necessary tower work, antenna mounting, outdoor cabling, and the delivery (but not the connection) of the new base station transmitter equipment to the equipment sheds; as well as the installation of such additional backhaul facilities as may be required to connect the various cells to the new CDMA switch. Although it is presently contemplated that Common Carrier Fixed Point-to-Point Microwave Radio Service facilities will be used

for backhaul, Copper Valley may elect to utilize other or supplemental facilities using a different technology.

8. From the completion of the work described in Paragraph No. 7 through February of 2007, Copper Valley will perform the physical inside installation work, including the physical racking (or actual installation) of the transmitter equipment inside the equipment sheds at the various sites, cable termination, and the connection of the equipment to the new power source(s). In addition, the finalization of the equipment configuration, implementation testing, call routing testing and optimization of the new network equipment will occur during this time period. Connecting the base station facilities to the switch will require extensive termination testing, routing testing and billing testing to ensure operations and optimization of the network from the base station locations. It is contemplated that the testing and optimization activities will require a technician to visit each cell site. Remote cell sites have limited accessibility during the winter months due to severe weather conditions and the remoteness of the sites.

9. The construction of these six replacement CDMA sites and the installation of the new CDMA switch will give Copper Valley the technical ability to accommodate Dobson's porting request, which is the only porting request received to date. CDMA base station facilities will be installed at the remaining seven sites during the Summer 2007 building season, and will follow the time line and procedures outlined above for the first six sites. However, none of the seven remaining sites are needed to accommodate Dobson's porting request.

10. Since not all customers can be immediately transitioned to the CDMA facilities, Copper Valley will be required to continue to operate the analog equipment



indefinitely, at least until all customers are on the CDMA system. Installation of the CDMA switch alone would not provide Wireless LNP capability because the switch will not operate with the existing Plexsys base station equipment, meaning that it could not be used to place or complete calls.

11. Copper Valley's Cellular Geographic Service Area ("CGSA") embraces sparsely populated areas in the State of Alaska, with thirteen cellular base station facilities at or near Valdez, Glennallen, Tolsona Ridge, Willow Creek, Naked Island, Paxson, Heney Ridge, Slana, McCarthy, Lake Louise, Cordova and Whittier. All of these areas lie within the Valdez-Cordova Census Area, which has a 2000 Census population of 10,195 persons. Copper Valley's CGSA covers only a small portion of the Valdez-Cordova Census Area. According to the 2000 Census data, the Valdez-Cordova Census Area embraces a land area of 34,319 square miles. Thus, the Valdez-Cordova Census Area embraces 10,195 persons within an area of 34,319 square miles – and Copper Valley's CGSA does not embrace the entire area or the entire population – which equates to 0.297 person per square mile.

12. At present, Copper Valley is the sole provider of wireless service in Central Prince William Sound, in McCarthy and in areas around Paxson.

13. Copper Valley is a very small Tier III CMRS carrier, as defined in the Commission's E-911 Small Carriers Order to Stay (CC Docket No. 94-102), 17 FCC Rcd. 14841 (2002). As of December 13, 2004, Copper Valley had 1,162 subscribers to mobile service, and an additional 179 households that receive fixed service. Of those 179 households, 95 are in the McCarthy area and the remaining 84 are in the Copper Basin area. For calendar year 2005, Copper Valley had gross revenues of \$1,450,355.00 as of

October 31, 2005. For immediate past years, Copper Valley had gross revenues of \$1,701,594.00 in calendar year 2004; \$1,704,500.00 in calendar year 2003; \$1,807,967.00 in calendar year 2002; and \$1,959,730.00 in calendar year 2001. As these figures demonstrate, annual gross revenues are generally declining. The **net loss** for calendar year 2005 (as of October 31, 2005) is \$24,960.00; for calendar year 2004 the **net loss** was \$70,097.00; for calendar year 2003 the net profit was only \$179,663.00; **with net losses** of \$306,577.00 and \$656,442.00 for calendar years 2002 and 2001, respectively. Thus, Copper Valley is an extremely small CMRS carrier with minimal revenues and limited financial resources at its disposal.

14. As noted above, the installation of the CDMA equipment will require construction of a new system through, for example, the installation of additional transmitters and antennas at the cell sites and, if needed, the construction of new towers. There is a limited construction season in the areas served by Copper Valley during which this work can be performed; and some of the cell sites are accessible only by helicopter due to, for example, the absence of paved roads in many areas. Construction can be performed only in the months of May through August. In winter, conditions are extremely harsh. Winter temperatures generally range from 20 to 25 degrees Fahrenheit in the Valdez/Prince William Sound area, and minus 20 to minus 40 degrees Fahrenheit in the Copper Basin area. Snowfall approximates 320 to 350 inches annually in the Valdez area, and 36 to 48 inches annually in the Copper Basin area. "Daylight" hours are extremely limited. Winter daylight (such as it is) consists of twilight conditions lasting approximately four hours per day (from roughly 10:00 a.m. to 2:00 p.m.). On a cloudy winter day, virtual nighttime conditions exist 20 hours-per-day; and street lights in

Valdez (the largest community served by Copper Valley, with a population of between 4,000 and 5,000 persons) remain illuminated.

15. If required to comply with the February 25, 2006 Wireless LNP deadline specified in the Order, Copper Valley could have to shut down its operations entirely. This would work a substantial hardship to its 1,162 mobile and 179 fixed subscribers. The one-year extension requested in this Petition is the realistic minimum needed to obtain and install the required replacement equipment.

16. As the foregoing clearly demonstrates, the totality of the circumstances present in this case are truly unique and would not arise in any of the remaining 49 states.

17. Copper Valley had hoped to be farther along in its equipment replacement project by this point in time, but was hampered by two factors. First, it was hampered by the May 2005 retirement of its parent corporation's long time Chief Executive Officer ("CEO") and General Manager, and the May 2005 resignation of its Chief Operating Officer ("COO"), who resigned after only five months on the job. The CEO and the COO were responsible for overseeing the equipment replacement project, with the CEO having primary responsibility but relying heavily on the COO for advice. As noted in Paragraph No. 2, the parent corporation is a telephone cooperative and, as such, is wholly-owned by its subscribers. The membership of its Board of Directors is derived from its subscriber base, and while the Board members are fully qualified in their respective private occupations, none are telecommunications experts. As such, they rely upon the recommendations of the CEO and General Manager (who, as noted, relies upon the COO). As might be expected, the new CEO and the new COO required a bit of time to get up to speed on all of the cooperative's activities, of which the equipment

replacement project was but one – and an extremely important and complex one at that. Second, the financial outlay required for the equipment replacement project is truly staggering for a company of Copper Valley’s very small size, and must be carefully developed and implemented to avoid placing the company in financial jeopardy.

18. The extension of time requested will enable Copper Valley to complete its new network equipment selection and installation activities that will render the system Wireless LNP, E-911 and CALEA compliant.

**The Wireless Local Number Portability and Waiver Requirements**

19. Under the Commission’s Rules, wireless carriers serving the top-100 MSAs were required to implement Wireless LNP by November 24, 2003, provided that they had received a *bona fide* deployment request from another carrier on or before February 24, 2003. Sections 52.31(a) 52.31(a)(1)(iv) of the Rules. According to the Commission, “carriers must be able to request deployment in any wireless switch that provides service to any area within that MSA, even if the wireless switch is located outside the perimeter of that MSA, or outside any of the 100 largest MSAs.” *Number Portability First Order on Reconsideration*, 12 FCC Rcd. 7236, Para. 138 (1997). For areas outside the top-100 MSAs, Wireless LNP must be implemented within six-months of receiving a deployment request from another carrier. *Number Portability Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, FCC 03-126, released June 18, 2003 at Para 8 n.17; *Number Portability First Order on Reconsideration*, 12 FCC Rcd. 7236, Para. 137 (1997).

20. The Commission may waive its rules when good cause is demonstrated. Section 1.3 of the Rules; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969),

*cert. denied* 409 U.S. 1027 (1972). The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Northeast Cellular, 897 F.2d at 1166; WAIT Radio, 418 F.2d at 1159. Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden. WAIT Radio, 418 F.2d at 1157. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. WAIT Radio, 418 F.2d at 1159. In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule. Section 52.31(d) of the Rules.

21. If a wireless carrier is unable to meet the six-month deployment deadline, "it may file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed." Section 52.31(d) of the Rules. Under Section 52.31(d) of the Rules, Wireless LNP waiver or extension of time requests "must set forth: (1) the facts that demonstrate why the carrier is unable to meet [the] deployment schedule; (2) a detailed explanation of the activities the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time; (3) an identification of the particular switches for which the extension is requested; (4) the time within which the carrier will complete deployment in the

affected switches; and (5) a proposed schedule of milestones for meeting the deployment date.”

**The Requested Waiver or Extension of Time is Clearly Warranted**

22. In view of Copper Valley’s exceptionally unique circumstances, it is abundantly clear that good cause exists to grant the requested temporary waiver or extension of time. Copper Valley has submitted substantial, credible evidence to support its contention that it is unable to comply with the February 25, 2006 deployment deadline.

23. The essential justification for the requested waiver is hardship – hardship accruing to both Copper Valley and its subscribers. As noted above, Copper Valley is a very small Tier III CMRS carrier serving 1,162 mobile subscribers, with an additional 179 households receiving fixed-point service, within the Alaska 2(B4) RSA. The service area is within the Valdez-Cordova Census Area, a census area which is sparsely populated with a 2000 Census population of only 10,195 persons but yet geographically extensive with a land area of 34,319 square miles. Gross revenues are comparatively modest and net income is, stated politely, even more modest – comparatively small net income for calendar year 2003 and net losses for calendar years 2001, 2002, 2004 and 2005. The system currently uses exclusively analog equipment that was installed in the early 1990s (and Copper Valley may well have one of the few such systems in the country so equipped), equipment which cannot be modified or upgraded to provide Wireless LNP, E-911 or CALEA. To achieve compliance with these Commission requirements, the equipment must be replaced at substantial cost – and Copper Valley simply needs additional time to complete the equipment selection, purchase and installation process. Were it not for the need to comply with the Wireless LNP, E-911

and CALEA requirements, the existing analog equipment (while quite old) would probably still have many years of useful life left in it, and be adequate for the communications needs of Copper Valley's customers.

24. The equipment replacement with new state-of-the-art equipment is thus regulatory driven, not marketplace driven. The installation of a new state-of-the-art digital switch, standing alone, is not a solution because the analog base station equipment simply will not operate with a digital switch. Installation of new equipment is hampered by a simple fact of life – the very short Alaska construction season (a factor in the construction of the new cell site facilities), which is confined to the months of May through August.

25. It is against this backdrop that Copper Valley's request for a temporary waiver or extension of time must be assessed. The equipment replacement project (while seemingly modest in scope for a large carrier) is a daunting task for a small carrier in Copper Valley's circumstances – circumstances unlikely to be faced by rural carriers outside the State of Alaska.

26. In fact, the inability to achieve compliance by February 25, 2006 is simply beyond Copper Valley's control. The inability derives from the economics associated with Copper Valley's extremely small size. Copper Valley has no control over the fact that it is extremely small, and no control over the fact that the demographics of its service area dictate that it will remain extremely small. Given the demographics of the Valdez-Cordova Census Area, Copper Valley will never be anything other than a very small carrier with a very modest revenue base. The entire census area has a population of only 10,195 persons, and as land area of 34,319 square miles, factors which establish the

upward limit of potential subscriber level and revenue growth and a ceiling which cannot be exceeded.

27. Clearly, no valid public interest purpose would be achieved by denying Copper Valley's request. If required to comply with the Wireless LNP requirements before the replacement equipment is installed and operational, Copper Valley would seemingly have no alternative other than shutting down its operations; and thus denying service to its existing mobile customers and fixed-point service households – an extreme hardship for both Copper Valley and its customers. The United States Court of Appeals for the District of Columbia Circuit views with extreme disfavor Commission regulatory requirements which require a wireless carrier to shut down all or part of its system.

*Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994).

28. As noted, Copper Valley's existing network equipment cannot be modified or upgraded to achieve Wireless LNP compliance. The equipment must be replaced at substantial cost, and Copper Valley is working on the equipment replacement project at this time. In *NOW Licenses, LLC*, Mimeo DA 04-1382, released May 17, 2004, the Commission granted temporary relief from the port-in component of the Wireless LNP requirements to a carrier in the process of replacing its equipment with Wireless LNP-capable equipment. Notably, the carrier's existing equipment was capable of being modified or upgraded to achieve Wireless LNP compliance. Nevertheless, the Commission granted some relief, stating that because "NOW's current switch will most likely soon be discarded and full LNP achieved by a new switch, any further upgrades to the existing switch will provide little benefit to consumers to justify the substantial cost, particularly given that the cost is incurred only to achieve porting in capability." *NOW*



Licenses, LLC at Paragraph No. 9. Similarly, in the Commission's Digital Wireless TTY Order (CC Docket No. 94-102), 17 FCC Rcd. 12084 (2002), temporary relief from digital wireless TTY obligations was granted to several small wireless carriers for their facilities operating on the Time Division Multiple Access ("TDMA"), a technology which was being discontinued by the equipment manufacturers and for which new functionalities were not being developed. The circumstances there were strikingly similar to the circumstances here. In granting relief, the Commission noted that requiring the carriers to implement TTY capability in their TDMA networks would be a waste of resources since infrastructure vendors and handset manufacturers were moving away from TDMA; the petitioners were small, rural carriers with limited resources; and requiring the carriers to expend a large sum of money on what would essentially be an interim solution would not be a good allocation of resources. Digital Wireless TTY Order, Paragraphs 21 and 22. If the costs associated with upgrades to an existing switch capable of modification are deemed to be unjustified under the public interest analysis and thus warranting an extension of time, then it is axiomatic that a limited waiver or extension of time is warranted where, as here, the existing equipment cannot be modified but instead must be replaced.

29. Of perhaps even greater significance are the factors recited in the Order which the Commission found as justifying grant of Copper Valley's first request for extension of the Wireless LNP requirements. These include: a) Copper Valley's small size; b) its limited financial resources; c) the unusual difficulties it faces with respect to the replacement of its equipment; and d) that it should not be forced to cease operations.

Order, Para. Nos. 6 and 7. These factors still exist; and Copper Valley respectfully submits that these factors justify the grant of the additional relief requested herein.

30. The remaining matters addressed by Section 52.31(d) of the rules are as follows: The particular switches for which the extension of time is requested are the four Plexsys D200/400 switches at Valdez, Glennallen, McCarthy and Cordova, which will be replaced with a new CDMA single switch platform. Copper Valley anticipates that the new equipment will be installed and operational at the six sites needed to accommodate Dobson's porting request by February 25, 2007. Copper Valley anticipates that it will commence construction of the new facilities by the end of June 2006; and will submit such interim reports as the Commission may require.

**The Commission's Wireless LNP Waiver Standard is Impermissibly Strict**

31. Section 251(f)(2) of the Communications Act of 1934, as amended ("the Act"), permits a rural local exchange carrier ("LEC") to petition its state public service commission for relief from the LNP requirements. Section 251(f)(2) of the Act specifies that the "State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification (A) is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience and necessity." Notably, Section 251 of the Act does not impose an LNP obligation on CMRS carriers, such as Copper Valley. Instead, rightfully or wrongfully, the requirement was imposed on CMRS carriers by the Commission through the aegis of statutory construction. See, e.g., Telephone Number Portability First Report and Order

and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352 (1996). Yet the standard adopted by the Commission for obtaining relief from the Wireless LNP duties is impermissibly more restrictive than the standard adopted by Congress for rural LECs, as codified in Section 251(f)(2) of the Act. There is simply no indication in the Act that Congress intended to authorize the Commission to adopt a standard more restrictive than the one adopted by Congress for rural LECs, and thereby to deny CMRS carriers equal protection of the law or the benefits of regulatory parity.

32. It is abundantly clear that Copper Valley is entitled to relief under the Section 251(f)(2) standard – and, indeed, considerably more relief than it is requesting in this petition. For example, relief avoids the significant adverse economic impact on users of telecommunications services generally by eliminating any requirement that Copper Valley discontinue its operations due to an inability to meet a Commission-imposed regulatory requirement, or that customers bear higher costs than necessary to receive the basic voice services that they are already receiving over the existing analog facilities. Relief would avoid imposing a requirement that is unduly economically burdensome by eliminating any *de facto* requirement that Copper Valley replace its cellular system network equipment prior to the end of its useful life span. Because under the Section 251(f)(2) standard Copper Valley would be able to use its existing analog Plexsys equipment indefinitely, relief would avoid imposing a Wireless LNP requirement that is technically infeasible given the capabilities of the current equipment. Given all of these factors, Section 251(f)(2) relief is consistent with the public interest.

33. While the record in this case clearly demonstrates that Copper Valley is entitled to the requested relief under the Commission's criteria, Copper Valley is

nevertheless compelled to note that it is even more entitled to relief under the Section 251(f)(2) standard. Copper Valley respectfully submits that Section 251(f)(2) of the Act sets forth the governing principles for decision in this case.

**WHEREFORE**, Copper Valley requests that the instant petition be granted.

Respectfully submitted,

**Copper Valley Wireless, Inc.**

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Filed: December 14, 2005

**ATTACHMENT A**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Telephone Number Portability

Petition of Copper Valley Wireless, Inc. for  
Waiver of Rule Section 52.31, or Extension of  
Time, to Comply with the Commission's Wireless  
Local Number Portability Requirements

CC Docket No. 95-116

**ORDER**

**Adopted: March 2, 2005**

**Released: March 3, 2005**

By the Deputy Chief, Spectrum and Competition Policy Division:

**I. INTRODUCTION**

1. In this order, we grant the petition filed by Copper Valley Wireless, Inc. (Copper Valley) seeking a one-year extension of time to comply with the Commission's wireless local number portability (LNP) requirements.<sup>1</sup> We grant Copper Valley's request for a waiver and extension of time based on our finding that Copper Valley has demonstrated that special circumstances exist to warrant an extension of time to comply with the porting requirements. We also find that it is in the public interest to grant Copper Valley's petition. We find that granting a one-year extension of time will provide Copper Valley with a reasonable amount of time to properly implement and commence porting.

**II. BACKGROUND**

2. *Local Number Portability.* Under the Commission's LNP rules, commercial mobile radio service (CMRS) carriers were required to offer number portability upon request from a competing carrier in the largest 100 metropolitan statistical areas (MSAs) by November 24, 2003.<sup>2</sup> Outside the largest 100 MSAs, CMRS carriers were required to support number portability by May 24, 2004, or within six months after receiving a request for number portability, whichever is later.<sup>3</sup>

3. *Petition.* On December 23, 2004, Copper Valley filed a petition seeking a waiver of the

<sup>1</sup> See Telephone Number Portability, CC Docket No. 95-116, Petition for Waiver of Rule Section 52.31, or Extension of Time, to Comply with the Commission's Wireless Local Number Portability Requirements from Copper Valley Wireless, Inc., filed December 23, 2004 (Copper Valley Petition).

<sup>2</sup> 47 C.F.R. § 52.31; Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002) (*2002 Forbearance Order*).

<sup>3</sup> Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7314 (1997) (*First Memorandum Opinion and Order*); *2002 Forbearance Order*, 17 FCC Rcd at 14986.

Commission's wireless local number portability requirements. Copper Valley contends that its unique and exceptional circumstances justify a one-year extension of time to implement wireless LNP. Specifically, Copper Valley explains that it is an extremely small wireless carrier serving a sparsely populated area in Alaska. It notes that its network uses entirely analog base station and switching equipment that cannot be retrofitted or modified to support wireless number portability. It explains that, although it is in the process of replacing its equipment with Time Division Multiple Access (TDMA) equipment, because of the extreme weather conditions in its operating area, it cannot begin installation of the new equipment until a new construction season begins in May.

4. Copper Valley asserts that its petition for waiver is timely filed. It notes that, as the result of a porting request received August 25, 2004, it would be required to implement porting by February 25, 2005. Copper Valley states that its petition is being filed at least sixty days in advance of the implementation deadline, in accordance with Section 52.31(d) of the Commission's rules.

5. *Waiver Standard.* The Commission may, on its own motion or on petition, waive its rules when good cause is demonstrated.<sup>4</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>6</sup> Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.<sup>7</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>8</sup> In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.<sup>9</sup>

### III. DISCUSSION

6. *Special Circumstances.* We find that Copper Valley has demonstrated that good cause exists to warrant a one-year extension of time to comply with the LNP requirements. First, we find that Copper Valley faces special circumstances that warrant an extension of time to comply with the LNP requirements. Copper Valley is an extremely small wireless carrier serving remote areas in Alaska. It has approximately 1200 mobile service subscribers and provides service in an area with a population of 0.297 persons per square mile.<sup>10</sup> Because of its small size, Copper Valley has extremely limited financial resources, and has faced declining revenues over the past several years.<sup>11</sup> Copper Valley currently uses an analog system and must replace its base station and switching equipment to be able to provide number portability. Because of the extreme weather conditions in the areas in which it provides service, Copper Valley could not have installed new equipment in the months immediately following its receipt of the porting request and cannot begin installation of its new equipment until May.<sup>12</sup> After completing outdoor installation work, Copper Valley must then complete inside installation work and equipment

<sup>4</sup> 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>5</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

<sup>6</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>8</sup> *Id.* at 1159.

<sup>9</sup> 47 C.F.R. § 52.23(e); see also 47 C.F.R. § 52.31(d).

<sup>10</sup> Copper Valley Petition at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

configuration and conduct implementation and call routing testing.<sup>13</sup> In view of Copper Valley's extremely small size and limited financial resources and the unusual difficulties Copper Valley faces with respect to the installation of new equipment, we find that Copper Valley has justified its need for an additional period of one year to comply with the LNP requirements.

7. *Public Interest.* We also find that Copper Valley has demonstrated that granting its request for waiver would serve the public interest. Copper Valley provides wireless service in particularly remote, sparsely populated areas in Alaska and is the sole provider of wireless service in several locations. Because of Copper Valley's limited financial resources, it is likely that denying its request for additional time to make technical upgrades necessary for porting could force it to shut down operations. We find that consumers who live in the areas in which Copper Valley provides wireless coverage would be better served by allowing the company to maintain service during the minimum time period necessary for it to convert to the more advanced equipment necessary for porting. Accordingly, we grant Copper Valley's request for a waiver and extension of time until February 25, 2006, to comply with the wireless LNP requirements for all porting requests it may receive prior to that date.<sup>14</sup>

#### IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), sections 1.3 and 52.31(d) of the Commission rules, 47 C.F.R. § 1.3 and 52.31(d), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the petition filed by Copper Valley Wireless, Inc. is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey S. Steinberg  
Deputy Chief, Spectrum and Competition Policy Division

<sup>13</sup> Telephone Number Portability, CC Docket No. 95-116, Supplement to Petition for Limited Waiver or Extension of Time from Copper Valley Wireless, Inc., filed February 23, 2005 at 2.

<sup>14</sup> We reject Copper Valley's argument that it is entitled to relief under section 251(f)(2) of the Communications Act. Section 251(f)(2) applies only to local exchange carriers serving fewer than two percent of the nation's subscriber lines and does not apply to wireless carriers. See 47 U.S.C. § 251(f)(2).




# DECLARATION UNDER PENALTY OF PERJURY

I, David Dengel, hereby state the following:

1. I am the Chief Executive Officer and General Manager of Copper Valley Telephone Cooperative, Inc., the parent corporation of Copper Valley Wireless, Inc.
2. I have read the foregoing "Second Petition for Limited Waiver or Extension of Time." With the exception of those facts of which official notice can be taken, all facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13<sup>th</sup> day of December, 2005.

  
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David Dengel